

known general rule against injunctions. It does not leave the taxpayer without power to resist an unlawful tax, whatever the difficulties in the way of resisting it.

The sequence of the clause in the amendment after others giving authority to grant writs of habeas corpus and mandamus shows that it puts a limit to the power of the Court. See *Dodge v. Osborn*, 240 U. S. 118, 119. That is a question of construction and common sense. *Fauntleroy v. Lum*, 210 U. S. 230, 235. Therefore when the District Court required a deposit in the registry of a sum to secure payment of the tax in dispute, the money should be returned as there is no jurisdiction to dispose of it otherwise.

Of course it does not matter that these cases had gone to a higher Court. When the root is cut the branches fall. *McNulty v. Batty*, 10 How. 72.

As the bills were dismissed upon the merits (with partial injunctions in *Valdes v. Gallardo* and *Finlay, Waymouth & Lee, Inc. v. Gallardo*) the decrees should be reversed and the cases sent back with directions to dismiss for want of jurisdiction.

Decrees reversed and bills ordered to be dismissed.

Money deposited in Court for payment of taxes in case of adverse decision to be returned.

GALLARDO v. SANTINI FERTILIZER COMPANY.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR PORTO RICO, TRANSFERRED FROM THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT UNDER THE ACT OF SEPTEMBER 14, 1922.

No. 164. Argued October 5, 1927.—Decided October 24, 1927.

1. In a case transferred here by the Circuit Court of Appeals in which this Court finds that the trial court lacked jurisdiction, direction for dismissal of the suit on that ground is made without determining whether the transfer was erroneous. P. 63.

2. The jurisdiction of the United States District Court for Porto Rico over pending suits to enjoin taxes was destroyed by the Act of March 4, 1927. See *Smallwood v. Gallardo*, ante, p. 56. P. 63.

Reversed.

ON transfer from the Circuit Court of Appeals for the First Circuit of a cause appealed from the United States District Court for Porto Rico.

Mr. William Catron Rigby, with whom *Mr. George C. Butte*, Attorney General of Porto Rico, was on the brief, for appellant.

Mr. Nelson Gammans for appellee.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill in equity brought in the District Court of Porto Rico to restrain the collection of taxes imposed by the laws of Porto Rico. An injunction was issued by the District Court, on March 31, 1925. On April 7, 1925, an appeal was allowed to the Circuit Court of Appeals for the First Circuit. That Court at first made a decree reversing the decree of the District Court, but later, on December 18, 1926, set that decree aside and transferred the case to this Court, under the Act of September 14, 1922, c. 305; 42 Stat. 837, conceiving that the jurisdiction of the District Court was invoked solely upon the ground that the controversy involved the construction or application of the Constitution of the United States. On March 4, 1927, the Act of Congress was passed that took away the jurisdiction of the District Court in this class of cases, as explained in *Smallwood v. Gallardo*, ante, p. 56.

The case has been argued upon the merits and also upon a motion to remand it to the Circuit Court of Appeals on the ground that the appeal properly was taken to that Court. As the only jurisdiction remaining anywhere is to make an order requiring the case to be dismissed for want of jurisdiction we need not discuss these

matters. The decision that no jurisdiction remains comes from this Court, and it is proper that it should carry out its decision without unnecessary circuitry by directing it to be enforced.

Decree reversed.

Bill to be dismissed for want of jurisdiction.

ATLANTIC COAST LINE RAILROAD COMPANY *v.*
SOUTHWELL, ADMINISTRATRIX.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF
NORTH CAROLINA.

No. 41. Argued October 18, 1927.—Decided October 31, 1927.

Assuming that a railroad company could be held liable under the Federal Employers Liability Act for the wilful killing of one of its employees by another, if it resulted from the negligent failure of their superior officer to foresee the danger and prevent it, the charge of such negligence is not borne out by the evidence in this case. P. 65.

191 N. C. 153, reversed.

CERTIORARI, 271 U. S. 654, to a judgment of the Supreme Court of North Carolina sustaining a recovery by the widow and administratrix of a deceased employee from the Railroad in an action based on the Federal Employers Liability Act.

Mr. Thomas W. Davis, with whom *Messrs. J. O. Carr* and *V. E. Phelps* were on the brief, for petitioner.

Mr. J. Bayard Clark, with whom *Messrs. Robert H. Dye*, *L. Clayton Grant*, and *C. D. Weeks* were on the brief, for respondent.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an action brought against the petitioner by the administratrix and widow of one of the petitioner's em-